Pushpa a/p Meenasundarom & Ors v Awai bin Hassan & Anor

HIGH COURT (MUAR) — CIVIL SUIT NO 25-14 OF 1988
RICHARD TALALLA J
14 DECEMBER 1991

Civil Law Act *— Fatal accident — Dependency claim — Dependants receiving benefits under s 26 of the Employees' Social Security Act 1969 — Whether precluded from claiming damages by s 42 of the Employees' Social Security Act 1969 — Civil Law Act 1956 s 7 — Employees' Social Security Act 1969 ss 26 & 42*

The first plaintiff was the widow of a motor cyclist who was killed on 13 March 1987 in a motor accident. She and her two infant children, the second and third plaintiffs, claimed against the defendants for loss of dependency under s 7 of the Civil Law Act 1956 ('the Act'). The defendants contended that under s 42 of the Employees' Social Security Act 1969 ('the Socso Act'), when any person is entitled to any of the benefits provided by the Socso Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other written law, and therefore, the plaintiffs were not entitled to claim damages because they had received and were receiving benefits under s 26 of the Socso Act.

Held, allowing the plaintiffs' claim:

Section 7(3)(i)(d) of the Act provides that in assessing damages, any sum which has been or will or may be paid under any written law relating to the payment of any benefit or compensation whatsoever, in respect of the death, shall not be taken into account. It would seem that under the Socso Act, the payment of benefits is confined to an employer/employee relationship as opposed to damages which flow from tortious wrongdoing. In the circumstances, s 42 of the Act did not provide a bar to the plaintiffs' claim.

[Bahasa Malaysia summary

Plaintif pertama adalah balu seorang penunggang motosikal yang telah dibunuh pada 13 Mac 1987 akibat suatu kemalangan motor. Beliau dan dua anaknya yang masih budak, iaitu plaintif kedua dan ketiga, telah membuat tuntutan terhadap defendan di bawah s 7 Akta Undang-Undang Sivil 1956 ('Akta itu'). Defendan menegaskan bahawa di bawah s 42 Akta Keselamatan Sosial Pekerja 1969 ('Akta Sokso itu'), apabila seseorang itu berhak mendapat apa-apa faedah yang diperuntukkan oleh Akta Sokso itu, dia tidak berhak mendapat apa-apa faedah yang serupa yang dibenarkan di bawah peruntukan mana-mana undang-undang bertulis yang lain, dan oleh itu, plaintif tidak berhak menuntut ganti rugi kerana mereka telah dan masih menerima faedah di bawah s 26 Akta Sokso itu.

A **Diputuskan**, membenarkan tuntutan plaintif:

Seksyen 7(3)(i)(d) Akta itu memperuntukkan bahawa apabila menilai ganti rugi, apa-apa jumlah wang yang telah atau akan atau mungkin dibayar di bawah mana-mana undang-undang bertulis berkaitan dengan pembayaran tentang apa-apapun faedah atau pampasan,
B berkaitan dengan kematian itu, hendaklah tidak diambil kira. Nampaknya di bawah Akta Sokso itu, pembayaran faedah dihadkan kepada hubungan majikan/pekerja dibandingkan dengan ganti rugi sebagai akibat suatu kesalahan tort. Dalam keadaan ini, s 42 Akta itu tidak merupakan suatu halangan kepada tuntutan plaintif.]

C **Notes**

For cases on damages under the Civil Law Act 1956, see 1 *Mallal's Digest* (4th Ed) paras 1783–1828; [1992] Mallal's Digest 146.

Case referred to

D *Koay Tuan & Anor v Eng Chong How & Anor* [1987] 1 MLJ 422 (distd)

Legislation referred to

Civil Law Act 1956 s 7
E Employees' Social Security Act 1969 ss 15, 26, 42

Rugber Singh (*Rugber Singh & Partners*) for the plaintiffs.
Shu Lee King (*VP Nathan & Partners*) for the defendants.

F **Richard Talalla J**: The first plaintiff is the widow of a motor cyclist who was killed on 13 March 1987 in a motor accident. She and her two infant children, the second and third plaintiffs, were dependent on the deceased and she is now claiming damages for loss of dependency under s 7 of the Civil Law Act 1956 ('the Act').

G The defendants contend that the plaintiffs are not entitled to claim such damages because they had received and to date are receiving benefits payable under s 26 of the Employees' Social Security Act 1969 ('the Socso Act').

Under s 42 of the Socso Act, when any person is entitled to any of the benefits provided by that Act, he shall not be entitled to receive any similar
H benefit admissible under the provisions of any other written law.

In *Koay Tuan & Anor v Eng Chong How & Anor* [1987] 1 MLJ 422 at p 424, it was held that an award of general damages in respect of a dependency claim under s 7 of the Act, being intended to compensate the dependants of the deceased in respect of loss of support is similar to
I "dependants' benefits" within the meaning of s 15(c) of the Socso Act which reads as follows:

> Subject to the provisions of this Act, the insured persons, their dependants or the persons hereinafter mentioned, as the case may be, shall be entitled to the following benefits, namely:

...

(c) periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee under this Act, as are entitled to compensation under this Act (hereinafter referred to as dependants' benefit); ...

The dependency claim in the *Koay Tuan* case was in respect of an industrial accident which occurred on 20 December 1974 and judgment in that case was delivered in March 1986. Since then the Act was amended to the end that s 7(3) proviso (i)(d) now provides as follows:

> The damages which the party who shall be liable under subsection (1) to pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the party liable under subsection (1):
>
> Provided that —
>
> (i) in assessing the damages there shall not be taken into account —
>
> ...
>
> (d) any sum which has been or will or may be paid under any written law relating to the payment of any benefit or compensation whatsoever, in respect of the death; ...

The defendants seek to avail themselves of the provisions of s 42 of the Socso Act and the interpretation given to the various sections of that Socso Act in *Koay Tuan*'s case.

On the other hand the plaintiffs contend that they are not precluded from claiming damages, by reason of the amendment to the Act as abovestated.

As I see it, Parliament by the amendment abovestated recognized and differentiated between benefits payable under the Socso Act and damages provided for under the common law. It would seem that the payment of benefits is confined to an employer/employee relationship (the preamble to the Socso Act states it to be an Act to provide certain benefits to employees in case of invalidity and employment injury including occupational diseases and to make provision for certain other matters in relation thereto) as opposed to the said damages which flow from tortious wrongdoing by a person at large against a like person, the former a creature of statute providing social security under the umbrella of social justice, protecting the disadvantaged from the advantaged regardless of blame, and the latter, in this instance, an extension of the common law by the legislature. The difference between the two is recognizable not only by comparison of terminology but also, and in my view more importantly, by appreciation of the respective underlying concepts from which they emanate. In the circumstances, and a fortiori the said amendment, I find that s 42 of the Act does not provide a bar to the plaintiffs' claim in this action.

Order accordingly.

Reported by Anne Khoo